

**In the Supreme Court of the United States**

OCTOBER TERM, 1990

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JEANETTE VERNA, PETITIONER

*v.*

GREGORY L. COLER, SECRETARY, FLORIDA DEPARTMENT  
OF HEALTH AND REHABILITATIVE SERVICES, and  
CLAYTON YEUTTER, SECRETARY OF AGRICULTURE

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ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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BRIEF FOR THE FEDERAL RESPONDENT  
IN OPPOSITION

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## QUESTION PRESENTED

The "voluntary quit" provision of the Food Stamp Act provides that a household is not eligible for food stamps for 90 days if the head of the household voluntarily leaves a job without good cause. The question presented is whether a regulation of the Secretary of Agriculture that defines the head of a household as the primary wage earner is valid.



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# **In the Supreme Court of the United States**

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No. 89-1916

JEANETTE VERNA, PETITIONER

*v.*

GREGORY L. COLER, SECRETARY, FLORIDA DEPARTMENT  
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## **OPINIONS BELOW**

The opinion of the court of appeals (Pet. App. 1a-8a) is reported at 893 F.2d 1238. The opinion of the district court (Pet. App. 11a-19a) is reported at 710 F. Supp. 1339.

## **JURISDICTION**

The judgment of the court of appeals was entered on February 6, 1990. A petition for rehearing was

denied on April 6, 1990. Pet. App. 9a-10a. The petition for a writ of certiorari was filed on June 7, 1990. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

### STATEMENT

1. The "voluntary quit" provision of the Food Stamp Act, 7 U.S.C. 2015(d)(1)(B)(ii), provides that

no household shall be eligible to participate in the food stamp program \* \* \* if the head of the household voluntarily quits any job without good cause, but, in such case, the period of ineligibility shall be ninety days. \* \* \*

The Act does not define "head of the household," but confers on the Secretary of Agriculture authority to "issue such regulations consistent with [the Act] as [he] deems necessary or appropriate \* \* \*." 7 U.S.C. 2013(c).

In 1979, the Secretary promulgated regulations defining the head of the household for purposes of the voluntary quit provision as the "primary wage earner," which was in turn defined as "that household member age 18 or over who was acquiring the greatest amount of earned financial support for the household at the time of the quit." 44 Fed. Reg. 17,984. In 1986, the Secretary issued revised regulations defining the head of the household as the "principal wage earner," who is defined as "the household member \* \* \* who is the greatest source of earned income in the two months prior to the month of the violation." 7 C.F.R. 273.1(d)(2). The revised regulations exempt from the definition of head of a household any person who lives with a parent (or a person fulfilling the role of a parent) who meets cer-

tain requirements, any person who works less than 20 hours per week, and any person who earns less than a specified minimum amount.<sup>1</sup>

2. In October 1985, petitioner applied to the Florida Department of Health and Rehabilitative Services (HRS) for food stamps. In her application, petitioner named herself as the head of the household and listed as members of the household her two children and her boyfriend, Lawrence Riley. Riley, who earned more money than petitioner, was a transient member of the household who contributed only to the rent. The lease and household utility accounts were in petitioner's name. Petitioner bought and prepared food for the household, and was responsible for the schooling and medical needs of the children. Pet. App. 12a.

Petitioner's household received food stamps until June 1986, when HRS notified petitioner that the household would be disqualified from participation in the food stamp program for three months because Riley had voluntarily quit his job without good cause. In November 1986, petitioner asked HRS to restore all food stamp benefits withheld during the 90-day period. HRS denied the request. Pet. App. 13a.

3. Petitioner then brought an action in district court, alleging that the Secretary's definition of "head of household" violated the Food Stamp Act. On cross-motions for summary judgment, the district court, applying this Court's decision in *Chevron U.S.A. Inc. v. Natural Resources Defense Coun-*

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<sup>1</sup> The revised regulations, which are set out at Pet. 25a-26a, took effect ~~on~~ January 1987. See 51 Fed. Reg. 47,378 (1986).



*vil, Inc.*, 467 U.S. 837 (1984), held that the Secretary's interpretation is a permissible construction of the statute and is consistent with the Act's goal of preventing families from deliberately making themselves dependent on food stamps. Pet. App. 14a-16a. The court rejected petitioner's argument that "head of the household" has a single plain meaning, citing as examples two distinct meanings of "head of household" under the homestead exemption of the Florida Constitution. Pet. App. 17a n.2. The court also observed that the Secretary's interpretation is supported by the legislative history of amendments to the voluntary quit provision in which Congress used the terms "head of the household" and "primary wage earner" interchangeably. Pet. App. 16a.

The court of appeals affirmed. It agreed with the district court that "the regulations are not inconsistent with the Act" and adopted the district court's opinion. Pet. App. 2a.

Judge Hatchett dissented. He concluded that the plain meaning of "head of the household," the legislative history of the voluntary quit provision, and the definition of "head of household" under other federal programs, all indicate that the head of the household is "the person with primary responsibility for the family." Pet. App. 6a. This definition, the dissenting judge concluded, is consistent with the Act's underlying purpose of raising the nutrition levels of low-income families. Pet. App. 7a.

## ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or any other court of appeals. Further review is therefore unwarranted.

1. Petitioner concedes (Pet. 26) that the court of appeals' decision does not conflict with any decision of any other court of appeals. The only other court of appeals to have addressed the issue upheld the validity of the Secretary's regulation. *Wilson v. Lyng*, 856 F.2d 630 (4th Cir. 1988). Although several district courts have held the regulation invalid, their decisions have either been reversed, see *Wilson v. Lyng*, 662 F. Supp. 1391 (E.D.N.C. 1987), rev'd, 856 F.2d 630 (4th Cir. 1988), overruled, see *Anderson v. Lyng*, 644 F. Supp. 1372 (M.D. Ala. 1986), overruled by *Verna v. Coler*, 893 F.2d 1238 (11th Cir. 1990), or are subject to further review by a court of appeals, see *Dubuque v. Yeutter*, 728 F. Supp. 303 (D. Vt. 1989), appeal docketed *sub nom. LePage v. Yeutter*, No. 90-6043 (2d Cir. Feb. 5, 1990); *Maine Ass'n of Interdependent Neighborhoods v. Commissioner*, 732 F. Supp. 248 (D. Me. 1990), appeal dismissed as premature, No. 90-1432 (1st Cir. July 20, 1990). Consequently, there is no present need for this Court to grant certiorari to resolve a conflict among the courts of appeals.<sup>2</sup>

2. On the merits, the decision of the court of appeals is correct. The court, applying the two-part analysis of *Chevron U.S.A. Inc. v. Natural Resources Defense Council*, *supra*, properly concluded that Congress has not spoken directly to the precise

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<sup>2</sup> In addition, the regulations at issue in this litigation have been revised. See note 1, *supra*.

question at issue, and that the Secretary's definition is based on a permissible construction of the statute.<sup>3</sup>

a. The Food Stamp Act does not define "head of the household," and petitioner's argument (Pet. 8-13) that this phrase has a single plain meaning is unconvincing. Petitioner cites definitions of "head of household" applicable in various legal contexts (Pet. 11-13), but these disparate definitions refute any contention that the phrase has a uniform meaning, let alone a plain meaning. Compare 25 C.F.R. 700.69(b) (for purposes of certain relocation payments to Indians, head of household is individual designated by household members to act as the head and speak on their behalf) and 20 C.F.R. 416.1866 (a) (for purposes of Supplemental Security Income program, head of household is person responsible for day-to-day decisions in the operation of the household) with 25 C.F.R. 125.4(c)(3) (for purposes of certain Indian benefits, head of family is primary source of economic contribution to support of the family) and 26 C.F.R. 1.2-2 (for federal income tax purposes, head of household is, *inter alia*, person who pays more than half the costs of maintaining the household). Indeed, petitioner herself fails to distinguish clearly between "the person most responsible for the health and welfare of the household" (Pet. 9-10) and "the decision-making aspect of the traditional head of household definition." Pet. 12.

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<sup>3</sup> Petitioner's contention (Pet. 8) that the court of appeals ignored the first step of the *Chevron* analysis is simply wrong. The district court opinion, adopted by the court of appeals, held that Congress has not spoken directly to the precise question because (1) the statute does not define "head of the household," (2) the phrase has no single plain meaning, and (3) the legislative history is ambiguous. Pet. App. 14a-17a.

It may well be true that the head of the household traditionally was regarded as a single family member who was the principal breadwinner and primary decision-maker, and who assumed the most responsibility for the family's welfare. But such a traditional conception fails to recognize that in many households today the "breadwinner may \* \* \* be someone other than the traditional family head." *Wilson v. Lyng*, 856 F.2d at 635 (citing 75% increase in "non-family households" from 1970 to 1980). Traditional notions of the head of the household also are inconsistent with the inclusive definition of "household" under the Food Stamp Act. See 7 U.S.C. 2012(i)(2) ("household" includes unrelated individuals who customarily purchase food and prepare meals together). In short, "head of the household" is not self-defining.

b. In addition, the Secretary's definition is not inconsistent with the legislative history of the voluntary quit provision. It is true that a report accompanying the 1977 amendments to the Food Stamp Act referred to the head of a household as "that member in whose name application is made for participation in the program." H.R. Rep. No. 464, 95th Cong., 1st Sess. 168 (1977). But this language was borrowed from a regulation in effect in 1977 that defined the head of the household for administrative purposes. See 29 Fed. Reg. 16,785 (1964). As the Secretary explained the following year, enactment of the voluntary quit provision "place[d] new importance on the definition of household head" and required revision of the definition to meet the congressional purpose "to prevent the family bread winner from voluntarily quitting work and then immediately relying on the program for support." 43 Fed. Reg. 18,879 (1978). The proposed revisions, along

with an explanatory statement, were submitted to Congress pursuant to 7 U.S.C. 2013(c).<sup>4</sup> Thus, there is no basis for petitioner's contention that Congress intended to define the head of the household as the individual who applied for food stamps.<sup>5</sup> Moreover, Representative Wright's reference to the head of the household as the "breadwinner," 123 Cong. Rec. 25,228 (1977), is consistent with the Secretary's definition. Finally, the reports accompanying the 1981 amendments to the Food Stamp Act (which applied the voluntary quit provision to households already receiving food stamps as well as to applicants) used "primary wage earner" as a synonym for "head of household." See H.R. Conf. Rep. No. 377, 97th Cong., 1st Sess. 218 (1981); S. Rep. No. 128, 97th Cong., 1st Sess. 18 (1981).<sup>6</sup>

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<sup>4</sup> Section 2013(c) of Title 7 provides, in part, that "prior to issuing any regulation, the Secretary shall provide the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a copy of the regulation with a detailed statement justifying it."

<sup>5</sup> Indeed, petitioner does not argue that the Secretary is required to adopt such a definition.

<sup>6</sup> Petitioner argues (Pet. 18-19) that "head of the household" must be construed to have the same meaning throughout the Food Stamp Act, and therefore the Secretary has no authority to adopt a uniform nationwide definition for purposes of the voluntary quit provision of the Act while permitting the States to adopt different definitions for purposes of other provisions of the Act. Although it is a maxim of statutory construction that words are presumed to have the same meaning throughout a statute, see *Sullivan v. Stroop*, 110 S. Ct. 2499, 2504 (1990) (citing cases), the maxim carries little weight where, as here, a federal agency administering a program of cooperative federalism has determined to afford the States the maximum amount of flexibility consistent with achieving the intent of Congress, by generally allowing the



c. In applying the second part of the *Chevron* test, the court of appeals correctly concluded that the Secretary's definition is a permissible construction of the statute. The 1977 amendments to the Food Stamp Act were intended to reduce abuse of the food stamp program and to simplify its administration. See H.R. Rep. No. 464, *supra*, at 2. In enacting the voluntary quit provision, Congress intended to prevent the head of a household from qualifying the household for food stamps by voluntarily leaving a job. *Id.* at 168. Petitioner's proposal to determine the head of a household without reference to earnings would undermine this congressional purpose by permitting persons who are capable of working to qualify their households for food stamps by voluntarily quitting their employment. See *Wilson v. Lyng*, 856 F.2d at 635. In addition, a definition that required a detailed and possibly subjective inquiry in each case to identify the person most responsible for the household hardly would simplify administration of the food stamp program. See *ibid.*

In sum, the Secretary's regulation permissibly construes the statute to achieve its purpose. The Secretary's definition incorporates elements of a traditional conception of the head of the household (by focusing on earnings, and by exempting minors), while reflecting the reality that the principal breadwinner in many American households is someone other than the traditional family head.

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States to adopt reasonable definitions of a term in appropriate instances. But even if the maxim were applicable here, it is only a presumption that is disregarded where different meanings are required to carry out the different purposes of separate provisions of the statute. See *District of Columbia v. Carter*, 409 U.S. 418, 421 (1973); *Erlenbaugh v. United States*, 409 U.S. 239, 245-247 (1972).

**CONCLUSION**

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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